Filed 2/15/11 Marriage of Brown CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of CHARLES A. and CHERYL ANN BROWN.	
CHARLES A. BROWN, Appellant, v. CHERYL ANN BROWN, Respondent.	E050620 (Super.Ct.No. FAMVS802822) OPINION

APPEAL from the Superior Court of San Bernardino County. Robert J. Lemkau, Judge. Affirmed.

Law Office of Valerie Ross and Valerie Ross for Appellant.

No appearance for Respondent.

Appellant Charles A. Brown appeals an order denying his request for a permanent restraining order protecting him against respondent Cheryl Ann Brown, his former wife. Respondent did not file an opposing brief on appeal. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant requested a domestic violence prevention temporary restraining order (TRO) on or about November 6, 2008. On November 7, 2008, the court issued the TRO against respondent and set a hearing for January 6, 2009. The record indicates the court issued the TRO based on appellant's declaration about two incidents occurring on October 24 and 26, 2008, while the parties were still living together but having serious marital problems. Thereafter, the court reissued the TRO on two different occasions and continued the hearing.

On March 8, 2010, the court held an evidentiary hearing to consider appellant's request to have the TRO made "permanent for five years." Both appellant and respondent testified at the hearing. The court denied the request, finding there was insufficient evidence to establish the need for a permanent restraining order.

DISCUSSION

Appellant contends the court abused its discretion by failing to issue a permanent restraining order. Appellant believes such an order is necessary for his personal safety. He argues there was sufficient evidence to establish the need for a permanent restraining order because he showed a history of violence and a pattern of inappropriate conduct over an extended period of time. Appellant believes this evidence suggests respondent's violent and abusive conduct is likely to continue if no permanent restraining order is in place.

"An order may be issued . . . to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons

involved, if an affidavit . . . shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse." (Fam. Code, § 6300.)[1] "In the discretion of the court, the personal conduct, stay-away, and residence exclusion orders contained in a court order issued after notice and a hearing . . . may have a duration of not more than five years, subject to termination or modification by further order of the court . . . . These orders may be renewed, upon the request of a party, either for five years or permanently, without a showing of any further abuse since the issuance of the original order . . . ." (§ 6345, subd. (a).)

The purpose of section 6345 is "the prevention of abuse where the court finds the protected party has a 'reasonable apprehension' abuse will occur at some time in the future if the protective order is allowed to expire." (*Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, 1288.) If the restrained party contests an extension of a restraining order, the court must make "an inquiry into the probability future abuse will occur." (*Id.* at p. 1287.) Under the "reasonable apprehension" standard, it is not enough that the protected party has "a subjective fear the party to be restrained will commit abusive acts in the future." (*Id*. at p. 1288.) "The 'apprehension' those acts will occur must be 'reasonable.' That is, the court must find the probability of future abuse is sufficient that a reasonable woman (or man, if the protected party is a male) in the same circumstances would have a 'reasonable apprehension' such abuse will occur unless the court issues a protective order." (*Ibid*.)

---

[1] All further statutory references are to the Family Code unless otherwise indicated.

As the party seeking to extend the restraining order, appellant has the burden of showing "reasonable apprehension" by a preponderance of evidence. (*Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1504.) We review an order granting or denying a request for a protective order under section 6345 for abuse of discretion. (*S.M. v. E.P.* (2010) 184 Cal.App.4th 1249, 1264-1265.)

In appraising the risk of future abuse, the court should consider a number of factors. These include the underlying facts and findings supporting the original issuance of a protective order, "any significant changes in the circumstances surrounding the events justifying the initial protective order," the seriousness and degree of risk (i.e., whether the risk involves potential physical abuse or lesser forms of abuse, such as harassing e-mails or telephone calls), and the burdens the protective order imposes on the restrained person, such as interference with job opportunities. (*Ritchie v. Konrad*, *supra*, 115 Cal.App.4th at pp. 1290-1292.)

As outlined above, the TRO was issued on November 7, 2008. More than one year had passed when the court held the evidentiary hearing on March 8, 2010, to consider extending the order. Evidence considered by the court included the declaration submitted by appellant to obtain the TRO, as well as the testimony of both parties at the hearing. The parties indicated they had been married for 22 years and first discussed divorce in February 2008.

In his declaration seeking a TRO and during his testimony at the hearing, appellant represented the events leading to his request for a TRO took place while he and respondent were still living in the same home, having serious marital problems, and

"endless fights." According to appellant, marital problems began when respondent revealed she had been involved in a five-year affair with a man who worked for appellant. To avoid the fighting, appellant occasionally left the home to stay a night or two in a local motel. On October 24, 2008, respondent became very upset when appellant decided to go to a motel and attempted to prevent appellant from leaving by "entwining her hands and arms in the straps of a canvas bag [appellant] had packed with [his] weekend clothes." According to appellant, respondent "pulled at the bag and tried to force [appellant] to stay." Appellant had to forcefully remove the bag from respondent's grasp, and she may have obtained bruises when this occurred. Appellant also stated respondent tried to stop him from closing the door to his vehicle and she then punched a rearview mirror, causing it to break.

Appellant's declaration and testimony also indicated he exited his motel room on October 26, 2008, and found respondent and their two teenage daughters waiting in the parking lot. They appeared to be very upset, so he decided it would be best to "get away from the explosive situation." Appellant and his girlfriend drove away from the motel. Respondent followed in a vehicle driven by the parties' 18-year-old daughter. When the situation began to involve a "high speed chase" with the daughter darting in and out of traffic, appellant decided to return to the motel. While stopped at a traffic light, respondent got out of the car, went to appellant's vehicle, opened the door, and grabbed the sunglasses from his face. He moved away to avoid being hit by respondent. Respondent and the two teenage daughters followed appellant and his girlfriend back to the motel, where a yelling and screaming match took place between the parties and their

daughters. Appellant went back to his motel room. Police were called and an incident report was prepared by the responding officer.

Appellant also testified respondent threw some silverware at him in April 2008, routinely took things away from him—such as his keys and cell phone—veered off the road once with the children in the car, and had threatened suicide.

On the other hand, appellant said respondent had not violated the TRO since it was issued. However, based on her past behavior, appellant testified he feared respondent would continue to harass him if the restraining order was not extended.

In her testimony, respondent denied threatening suicide or punching appellant's vehicle, but did not deny the other incidents. Her testimony about these other incidents was fairly consistent with appellant's declaration and testimony. However, she said she was "over" her divorce, wanted "to move on" with her life, regretted the incident in October 2008, and did not believe she would ever do anything like that again. She no longer feels outraged with appellant or jealous of his relationship with his girlfriend.

In our view, the trial court did not abuse its discretion in denying appellant's request for an extension of the TRO against respondent for a period of five years. We agree with the trial court's apparent conclusion appellant did not present enough evidence to show a reasonable apprehension of future abuse. As respondent's counsel said in a closing statement, the incidents that served as the basis for the TRO were driven by the "heat of the moment" and a "very volatile situation"—the breakup of a long-term marriage and appellant's affair with another woman. The record indicates the circumstances have changed significantly since that time. The situation is no longer a

volatile one. By the time of the hearing, the parties had been living apart for more than one year and had moved on with their lives. Respondent had not violated the TRO. Nor was there any evidence to suggest she had attempted to contact or follow appellant or had done anything to cause him to continue to be fearful of her. Weapons were not involved and, as counsel represented, "there is a disparity in physical size." Respondent is five feet one inch tall, and weighs 107 pounds; appellant is stronger than she is. In addition, as counsel argued, a continued protective order could be a burden on respondent because she had not worked during the long-term marriage, was trying to develop a career, and could have difficulty obtaining employment if a permanent order was issued.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

CODRINGTON
J.